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Book Reviews

INTERNATIONAL LAW, A TREATISE. By L. Oppenheim, Whewell Professor of International Law in the University of Cambridge; obiit 1919. Third edition, by Ronald F. Roxburgh, Barrister-at-Law, formerly Whewell Scholar, London; Longmans, Green & Co.; 1920. In two volumes, pp. xlvi, 799 and xlvi, 671.

In the original edition of Oppenheim's International Law in 1905, appearing when the author was forty-seven years of age, there was an excellence which brought him in 1908, without his seeking, to what is probably the highest honor of that nature in Great Britain, the Whewell Professorship of International Law in the University of Cambridge. Professor Oppenheim continued there to the time of his death late in 1919. He rendered important consultatory services to the British Government in the world war. He had become a British subject on changing his residence from Basel, Switzerland, to London in 1895. By birth, in 1858, he was of a well known Jewish family of Frankfurt-am-Main, and was educated in Göttingen, Berlin, Heidelberg and Leipzig Universities with von Jhering, Bruns and Baron on Roman law, Beseler and Binding on German law and Bluntschli on international law. He married an English lady of military family whose interest in his career was a large element in its happiness and success. Before going to Cambridge he was for several years lecturer on international law at the London School of Economics and Political Science. He devoted himself absolutely to the principles of his adopted country. He edited the collected papers of his predecessor at Cambridge, Professor John Westlake. In 1912, with Colonel J. E. Edmunds, he prepared a manual of the War Office on land warfare for guidance of British Army Officers. Until the outbreak of war in 1914 he was a co-editor of the *Zeitschrift für Völkerrecht*. He was a founder of the *British Year Book of International Law*. In course of the war he wrote useful manuals at the behest of the Foreign Office and was much occupied there from day to day. His very richly stored library supplied information on international affairs found unavailable even in Downing Street. After the war, in which his exertions and sorrows had gravely imperilled his health, he felt himself obliged to make the supreme effort of his life in rewriting his work on international law so as to include materials vastly accumulated since its second edition in 1912 and so as to state the more recent developments of scientific principles. Unfortunately these efforts, culminating in his sixty-first year, were his last. From his diligently and all but completely made notes, mostly in the margins or as inserts in his copy of the 1912 edition, his friend and former student, Mr. Ronald F. Roxburgh, with the aid of Mrs. Oppenheim and of the publishers, skilfully and devotedly prepared the third edition, a consummate masterpiece of scholarship and statesmanship. Like an important judicial opinion rendered after long and severe contest at the bar, reviewed in light

of new evidence and affirmed on appeal, Professor Oppenheim's International Law is and will long remain established in authority wherever international law has domain.

A great predecessor of Oppenheim, Grotius, had brought out the *De jure belli ac pacis* almost exactly three centuries earlier in the midst of a similar epoch of general European war and economic devastation. The earlier and, it is certain to prove, the later work also were so thoroughgoing and well perfected that governments and commercial interests, even those internationally opposed, have been and are long to be influenced and controlled by expressions of principles to be found in these authorities. Each of them, providentially, was peculiarly familiar by travel and associations with the affairs and tendencies of other nations than his own. They were alike widely esteemed for intellectual gifts, for taking part in leading activities of their times, for high learning and culture, and for geniality of nature and manner. Their writings have also very comparable attraction and persuasive effect by way of their fine quality as literature.

Both Grotius and Oppenheim occupied themselves on their main writings while residing in countries at the time, it happened, more congenial than their native lands to liberal thought and better circumstanced for accurate and full information of foreign conditions and events, Grotius in France and Oppenheim in England. Indeed, the hospitality of England to scholarship in international law, especially hospitality in the universities of England, has bestowed immeasurably great benefits upon the world. For example, there were, as near contemporaries of Grotius, Albericus Gentili, an Italian jurist, who became professor of Civil Law at Oxford, publishing in 1598 his *De jure belli*, which supplied the framework of Grotius' first and third books, and Richard Zouche, native of a Swiss state, who came to Oxford also as professor of Civil Law, being later a judge in the Admiralty Court, and publishing in 1650 his *De jure intergentes*, the first systematic treatise on positive law in relations among states, and meriting him the title of "Second Founder of the Law of Nations." Grotius himself would have experienced at the time he wrote, or very little later, agreeable associations in England since he was a champion of intellectual and moral freedom then coming to ascendancy in England. And for instances of English hospitality towards modern international law writers we Americans have only to cite the fact of numerous editions of Wheaton carried forward in England and similarly for the International Law of Halleck, done at San Francisco, but edited in its best form in London.

Yet law instruction in England, and much more in the United States, is so much bent of recent years upon study of judicial decisions as to reduce by great extent the due and necessary regard of students and beginning practitioners for other enunciations of legal principles, even those by co-equal authorities of government. As Secretary of State Hughes said a few months ago before the United States Chamber of Commerce, legalistic settlement of con-

troversies, and particularly of those with international features, forms but a very minor proportion as compared with counseling and negotiation, for which only the soundest and broadest intelligence, professional skill, aptitude of sincere friendliness and courage in action are requisite. But if the importance and indispensability of appropriate citation of authoritative text-writers required argument, a reference to the judicial opinions themselves would suffice. Few texts in other subjects may be cited, whereas in international law the citations are numerous and extended. Vattel and Wheaton are the basis for leading earlier decisions of the United States Supreme Court, and Moore's Digest is a great treasury of more recent research as to facts and of masterly statement of principle. Shall our students be restricted to examining citations of court reports while the greater proficiency and authority of others is minimized? For international law, an actively progressing branch of the law, probably the observations of text-writers are passed over only at jeopardy of the client's rights. Besides, it is only in the text-writers that we may thoroughly inform ourselves of the *milieu* of development of these principles as viewed in history, economics and policy.

The two volumes of Oppenheim's International Law sufficiently set forth all the greater principles determinative of international justice. His illustrative material, including adjudicated cases, is well selected and proportioned and of present and living interest. His point of view is British, but he duly and generously appreciates other opinions. He is free, as some lesser, though often referred to, writers are not, of repetition of trite and mistaken expressions. He has no partisan or too narrowly limited or theoretic objectives. He tries no forcing of growth of features of the law that must wait upon necessity and experience for their evolution. His reasoning is new, clear, thorough and conclusive. The reader's best thought accompanies the author from page to page by reason of an engaging style and of lucid development, with true bearing at all times upon actual situations and practical measures. For Professor Oppenheim, international law is actual law and not a law of nature or of diplomatic usage, not a congeries of lifeless and obstructing precedents, but a creative and on-going power, unceasingly and all in all human.

In Professor Oppenheim's *Zukunft des Völkerrechts*, as in Professor Munroe Smith's *The Nature and Future of International Law* (Professor Munroe Smith is now honoring our University as an exchange professor of Law), the former in honor of Professor Binding's *festgabe* anniversary in 1911 and the latter as the president's address in 1918 before the American Academy of Political Science, the counsel given us is for proceeding only upon well-tested ground and by highways of progress broadly founded in public opinion. The idea of collective and positive action by the society of nations in securing world peace is not new. "What is new is the wide support given to these plans and the endorsement they have received from responsible statesmen," says Professor

Munroe Smith. "Let us ask ourselves," he says, who teach in the fields of history, sociology, economics, politics and law whether our endeavors "work for the welfare and the progress of the world; whether they tend to further the immemorial effort of humanity to rise from the mire of brute struggle or survival to the clean heights of a noble rivalry in common efforts for the general good." And Professor Oppenheim said, "For the sound advance of humanity, the independence and the competition of the different nations is as necessary as the freedom and competition of the individual." He encouraged "popularization" of international law, meaning that it would benefit all men if those who, very generally, have opportunities of study would aid in increasing sound information and just opinions on the part of the public as to international law.

Professor Oppenheim's International Law is proving, as observed at the University of California, uniquely and specially interesting and advantageous to university and law students. Something of the amiability of Professor Oppenheim for his students and the delight of conversation with him seems to come from the pages of his book. He gets students to think for themselves, to dominate facts with legal reasoning, to control adverse circumstances with confidence in established rules of law. Early in his use of Oppenheim the student feels that he is in company of great authority and that only by rigorous and faithful endeavor can he go with the master into all the field of his survey. He inspires an intelligent faith in human progress and a high resolve to do useful service for our times.

Professor Oppenheim was a scientist, yet also an idealist. In these qualities of certainty and of well-reasoned purpose Professor Oppenheim especially commands the admiration and resolution of the new generation now advancing to its mature responsibilities at this time of world reconstruction. "Our method," he said, "must certainly be the positive method, but it can successfully be applied only by those workers who are imbued with the idealistic outlook on life and matters. He who believes that the essential characteristic of law is the policeman who protects it is not properly fit to work at the science of international law, nor is he who has not a deep-rooted faith in the progress of nations towards peace and civilization."

Our Dr. Scott of *Scott's International Law Cases*, for which Oppenheim's International Law may well be one of the counterparts in a properly balanced course of study, tells of an incident occurring at an Oxford session of the Institute of International Law a year to the month before the outbreak of the world war. The members usually passed the evenings in social conference, and on an evening when Professor Oppenheim and Mr. Elihu Root had so been leaders of a conversation until an unusually late hour, and the two, with other company, were leaving, the friendly farewell of Mr. Root to his friend was, "Bon soir, cher Maître!"

Frank E. Hinkley.